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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/526,136

01/31/2006

Kai Hensen

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21324 7590 09/26/2008  
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EXAMINER

HOLMES, REX R

ART UNIT

PAPER NUMBER

3762

NOTIFICATION DATE

DELIVERY MODE

09/26/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patents@hahnlaw.com  
akron-docket@hotmail.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/526,136	<b>Applicant(s)</b> HENSEN ET AL.	
	<b>Examiner</b> REX HOLMES	<b>Art Unit</b> 3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 August 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/15/08 has been entered.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nichols et al. (U.S. Pat. 6,266,566 hereinafter "Nichols") in view of Pless et al. (U.S. Pub. 2003/0144711 hereinafter "Pless").

5. Regarding claim 1, Nichols discloses an external programming device for an implant that comprises a receiving unit (222), a touch sensitive display (228) with an actuating unit (226), a switching unit (226), and at least two time-continuous horizontal display positions wherein the first display position is constant (Fig. 9, elements 272B, 274B, 276B; Col. 11, ll. 14-30). Nichols further discloses that the display has a representation window for displaying and ECG (e.g. 278B) and a surface switching element beside the representation window (generally shown on figure 10 below the 270B arrow; Col. 11, ll. 14-30).

6. Regarding claim 5, 7, Nichols discloses that the whole screen is touch-sensitive (Col. 11, ll. 31-36). Nichols further discloses multiple points on the touch-screen that are used to control, switch, and select the waveforms (Figs. 9-10).

7. Regarding claims 1, 5 and 7, Nichols discloses the claimed invention except for the programming device being made out of two parts a base device and a handheld device that contains the display. However, Pless discloses a system for interacting with an implantable device that is comprised a handheld programmer (114) that contains a display and a base docking station (128) to allow for charging and wired communication when wireless is unavailable. The handheld programmer is capable of being connected to or separated from the base docking station (see Fig. 1; Paragraph 60). It would have been obvious to one having ordinary skill in the art at the time the invention was made

to modify the programmer as taught by Nichols, with handheld programmer with base station as taught by Pless, since such a modification would provide the predictable results of a programmer with a handheld display for easy viewing and programming by a physician or patient and a base station to dock the programmer for charging and wired communication.

8. Regarding claims 2-4, Nichols in view of Pless disclose the claimed invention but does not disclose expressly the way in which the display screen refreshes the data. It would have been an obvious matter of design choice to a person of ordinary skill in the art to modify the programmer/display as taught by Nichols in view of Pless with the left to right continuous refresh, a clear and refresh of the signal on the left hand side, or displayed continuously with a right hand representation, because Applicant has not disclosed that any of the display representations provides an advantage, is used for a particular purpose, or solve a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the continuous display representation as taught by Nichols in view of Pless, because it provides updated display and analysis of a real-time signal and since it appears to be an arbitrary design consideration which fails to patentably distinguish over Nichols in view of Pless.

Therefore, it would have been an obvious matter of design choice to modify Nichols in view of Pless to obtain the invention as specified in the claim(s).

9. Regarding claim 6, Nichols in view of Pless discloses the claimed invention except for the switching element being a button beside the display. It would have been

obvious to one having ordinary skill in the art at the time the invention was made to modify the display as taught by Nichols in view of Pless, with a button beside the display for input since it was known in the art that buttons on the side of the display can be used to input data and control the operation of programmers and to provide the predictable results of a input system that corresponds to the information on the display.

### ***Response to Arguments***

Applicant argues that Nichols in view of Pless fails to show a touch-sensitive display with a representation window and a surface switching element beside the window. The examiner respectfully disagrees. Nichols further discloses that the display has a representation window for displaying and ECG (e.g. 278B) and a surface switching element beside the representation window (generally shown on figure 10 below the 270B arrow; Col. 11, ll. 14-30).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to REX HOLMES whose telephone number is (571)272-8827. The examiner can normally be reached on M-F 8:00 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on 571-272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. H./  
Examiner, Art Unit 3762

/George R Evanisko/  
Primary Examiner, Art Unit 3762